THE FEDERAL CHILD LABOR LAW

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The Federal Child Labor law passed by Congress last September will, when it takes effect in September, 1917, bar from interstate commerce the products of mines and quarries where children under sixteen years of age are employed, and the products of mills, canneries, factories, and workshops where children under fourteen years of age are employed, or where children between fourteen and sixteen years of age work more than eight hours a day or at night. The act is based upon what is virtually a new interpretation of the interstate commerce clause of the Constitution, for it is the only federal law whose ultimate effect is to regulate conditions of employment within the states. This effect is produced indirectly, because the wording of the law is not aimed straight at the conditions of employment, but at the market for products. However, in actual practice the effect of "Thou shalt not ship" is the same as that of "Thou shalt not hire." The employer is still free to employ children as he pleases, within the limits prescribed by the law of the state in which he operates, so far as his business in that state is concerned, but as he depends chiefly on interstate commerce to market his products, he is forced to comply with the federal law.

It will be observed that this law applies only to that phase of child labor which is found in the productive industries of manufacturing, mining, and quarrying. This limited application of the law is due partly to the public's correspondingly limited conception of the problem, and partly to the limitations of the interstate commerce clause itself as a means of attacking a national situation of this kind. According to our latest federal census the number of children ten to fifteen years of age employed in these industries is only 15 per cent of the total number of such children engaged in all gainful occupations, yet the popular conception of child labor

is almost entirely restricted to this part of the problem. When anyone mentions child labor, the average person immediately visualizes a scrawny, flat-chested, pale-cheeked little boy or girl standing by a spinning-frame in a southern cotton mill, or an overworked, dirty-faced lad in a West Virginia coal mine. The public is not yet familiar with the types of child workers in the more extensive fields of agriculture, domestic and personal service, trade, transportation, and public and professional service. While it cannot be said that this restricted popular conception was entirely responsible for the limited application of the federal law, inasmuch as the power of Congress to regulate interstate commerce could hardly be stretched to cover all these fields, nevertheless it is undoubtedly true that if public opinion had been as well developed concerning the abuse of children in these other phases as it was concerning their abuse in manufacturing and mining, some way of improving the whole situation through federal action would certainly have been found.

In fact, the freedom of the states to deal with any phase of the problem has not been much curtailed by this act. So far as child employment in manufacturing, mining, and quarrying is concerned, the four standards embodied in the federal law had already been adopted by most of the states; indeed, the federal law might be called a national ratification of the state regulations for these branches of productive industry. After the law takes effect, the states will continue to enjoy the right to correct or neglect the other forms of child labor as they see fit.

One of the reasons for the enactment of the federal bill was the demand for comprehensive and vigorous authority to deal with our widespread and baffling problems. This demand is expressing itself in the trend toward the centralization of power in the federal government. As a people we are gradually becoming more national as society becomes more complex, and as communication becomes more diffuse. As the life of the people reaches beyond state borders, a larger administrative unit is required for the satisfactory management of affairs. The effects of the European war have intensified the growing conviction that our labor problems are national and not local; we know now that the improvement of

conditions and the reform of administration are matters of concern to the people as a whole. National action is therefore demanded.

Another reason for the passage of the federal law was the cry for uniformity in legislation. Employers of labor have for many years contended that it is not fair to compel a man doing business in progressive states to comply with high standards while competitors elsewhere enjoy the advantage of cheap labor because of lower standards. The argument is advanced that if there were uniformity in labor legislation no injustice would result and no opposition would be offered to the adoption of very high standards; each employer simply wants to be assured that the other fellow is subjected to the same requirements as he is. However, if the federal law should be regarded merely as an attempt at uniformity, it could not be said to have accomplished its purpose. To try to achieve uniformity in legislation through federal acts, while the states are permitted to adopt standards higher than those set by the national government, would be altogether futile. Even today, months before the federal law is to take effect, several of the states already have more advanced standards than it fixes, and the employers of those states will continue to be at the same disadvantage as formerly, if operating under high standards can be justly termed a disadvantage. It is a foregone conclusion that some of the states will adopt varying standards above those of the federal law, while others remain content with the national act, and so the lack of uniformity will again be marked. The federal law simply establishes minimum standards for the industries affected, leaving the states free to exceed them as they may deem wise. Uniformity under this arrangement could not be attained unless all of the states agreed not to exceed the federal standards, and that, of course, is out of the question. But it was very necessary to oblige backward states to adopt the age limits and work hours for manufacturing and mining generally recognized as proper minimum standards, and in accomplishing this, if for no other reason, the federal law may be said to be a success.

There is still another reason for its passage, perhaps the most important of all, and yet one that has received little or no considera-

tion. It is the conviction that more effective administration would be secured through federal action. The national government is expected to enforce its laws better than the states have enforced theirs. Whether fortunately or unfortunately, nevertheless it is a fact that individuals and corporations stand more in awe of the federal government than of their municipal, county, or state governments. It is a more powerful agency and works more thoroughly and efficiently. The seat of federal labor inspection is farther removed from the places inspected, and therefore the inspectors are less likely to fall under local influences than are the officers of the minor governments. The variety of provisions for enforcement of state laws made by the different states is a very important element of the problem. The machinery provided varies with the nature and stage of development of the industries in each state, and also depends upon the extent to which the labor laws apply to these industries. For example, in Mississippi where the child labor law affects only mills, factories, and canneries, and where the number of such establishments is comparatively small, one factory inspector is charged with the duty of seeing that it is obeyed. In New York the child labor law applies to factories, stores, offices, restaurants, hotels, tenements, bowling-alleys, barber-shops, places of amusement, bootblack stands, mines, quarries, distilleries, breweries, to delivery and messenger service, and to newspaper selling, and there is required to insure its observance an elaborate organization which includes divisions of factory, mercantile, and homework inspection, employing 150 inspectors.

The prosecution of violators of the law is a vital part of administration, for if the courts do not support the inspectors by imposing the penalties prescribed for offenders, the whole system of enforcement falls to the ground. As the federal courts will have jurisdiction in cases of violation of the federal law, they will be confidently looked to for more effective handling of such cases than has characterized the action of local courts. Officers charged with the enforcement of child labor laws even in the most enlightened communities commonly complain that in some of the courts it is almost impossible to secure convictions for violation, and that, when convicted, the defendant is often either fined the minimum

sum fixed by law, or released under suspended sentence. The usual policy of labor inspectors is first to warn employers concerning breaches of the law, and to resort to prosecution only after repeated warnings have been disregarded and evidence of violation is clear and convincing. But when the employer is at last brought before the court, the chances are that he will be either dismissed with a warning, because "it is the defendant's first offense," or the minimum fine will be imposed. This minimum is often absurd, especially when the law provides that the offender shall be fined "not more than" a certain sum, in which event the court frequently fixes the amount at one dollar! For twenty years Connecticut has forbidden the employment of children under fourteen years of age in factories, and a violation of this law after such a long period of enforcement should certainly be looked upon as a flagrant offense meriting severe punishment; yet a manufacturer of paper in that state, who recently pleaded guilty to the charge of having in his employ two boys under this age, was fined just one dollar!

The annual reports of the New York factory inspectors invariably contain complaints about the failure of the courts in that section of the state where the canning of fruits and vegetables is an important industry to convict defendants even when they submit a mass of conclusive evidence. They assert that judges and juries in such communities will not uphold the labor law. At one cannery, under a single roof, the factory inspector found at work 180 children under fourteen, some of them under ten years; four different proceedings were instituted against the company for these violations, but in every case the complaint was dismissed. The chief inspector of workshops and factories in Ohio says that in his state the disregard of the courts for the labor laws is "most appalling"; many cases are dismissed, and, according to his latest report, even where convictions were obtained, 72 per cent of the fines imposed were either suspended or remitted. Ten different prosecutions for illegal employment of children are noted in an annual report from South Carolina, but only one was against an employer and that was promptly dismissed by the court. The other cases were against parents, who are as a rule ignorant, while the employer is usually intelligent, familiar with the laws, and certainly more

culpable. The federal law will doubtless work a much-needed reform, as it lays upon all United States district attorneys the duty of prosecuting violators in the federal courts upon the complaint of any federal, state, or local officer, or private individual, who may present satisfactory evidence of infringement. The prospect of acquittal through influence in the federal courts is far more remote than in local tribunals. The judges and prosecutors in the federal courts are appointed by the President and are therefore not concerned with local political situations, while, on the other hand, county and municipal magistrates are elected by vote of the people whom they are called upon to judge, and are frequently subject to the influence of local political organizations whose policy is largely dictated by the employing class. After the Federal Child Labor law takes effect, if a state inspector is unable to obtain a judgment against a violator, he may trace a shipment of goods from the establishment concerned into interstate commerce and then lay the matter before the United States Court through the district attorney. The situation can hardly fail to improve, as the chances for conviction are thereby greatly increased.

In addition to the removal of children under sixteen years of age from quarries and mines and of those under fourteen years from factories and mills, and the restriction of the work hours of children between fourteen and sixteen years of age in manufacturing establishments, the federal law will have a profound effect upon education. It will hasten the coming of the sixteen-year age limit for compulsory school attendance through its national indorsement of the restrictions upon the labor of children between fourteen and sixteen years, and for this reason will cause a quickening of interest in vocational education throughout the country.

It will not directly affect the situation where its four standards or others higher already prevail, as in Massachusetts, New York, New Jersey, Ohio, Illinois, Kentucky, Wisconsin, Missouri, and a few other states. As the laws of many states having mining and quarrying industries already forbid children under sixteen years to work in them, and as there are comparatively few children in the entire country employed in such industries, the federal act will not

alter conditions to any appreciable extent in this field. Most of the states also prohibit night work in factories by children under sixteen years; hence this provision will not have much effect.

The provision that will bring about a change is the eight-hour work day for children between fourteen and sixteen years; and especially will this be true in manufacturing states like Pennsylvania and Indiana, where such children now work nine hours a day; in Connecticut, New Hampshire, Rhode Island, Michigan, and Louisiana, where they work ten hours a day; in the Carolinas, Alabama, and Georgia, where their work day is eleven hours; and in West Virginia, where there is no limit whatever. Judging by experience in Massachusetts and elsewhere, many employers in these states will probably discharge the children concerned and endeavor to substitute in their places older persons, or machinery; if neither answers the purpose and the employers find that only children will meet their requirements, the children will be taken back and the employers will adjust their schedules of work hours to conform to the provision of the law.

Pennsylvania presents a unique problem in this connection. In that state children between fourteen and sixteen years who are regularly employed are required to attend continuation schools wherever such schools have been established, not fewer than eight hours a week between eight o'clock in the morning and five o'clock in the afternoon, but not on Saturday—in other words, the time for this schooling is taken out of their work hours. They must not be employed more than nine hours a day and fifty-one hours a week; hence the actual time given to work is forty-three hours a week. The federal law will oblige manufacturers to reduce the work day of such children to eight hours, so that even if a child puts in a full work day on Saturday, his actual work week will be only forty hours; and if he gets a half-holiday on Saturday, it will be only thirty-six hours. The situation in Pennsylvania is exceptional. If industry does not adjust itself to the requirements of the federal law, it may mean the exclusion of children under sixteen years from factories, mills, and workshops, but recent reports from that state indicate that the matter will be satisfactorily arranged without discharging the children. California, Massa-

chusetts, New York, and Ohio have laws providing for continuation schools and also limiting the work day of children to eight hours. Indiana and Wisconsin specify the eight-hour work day, but the former authorizes nine hours per day if the parents of the child consent, and the latter eight and one-half hours if a half-holiday is granted on Saturday. Pennsylvania is the only state having provision for continuation schools that does not in any way fix the work day of children at eight hours.

Admittance to the ordinary elementary schools will be sought by the majority of these children when they are discharged from the factories, mills, and workshops, and hence, for a time at least, there will be a corresponding decrease in the attendance of children between fourteen and sixteen years of age at continuation schools in those states where such schools are established. If the children resume their work in the factories, mills, and workshops, the continuation schools will again accommodate them, but it is not likely that the number of such children will be so great as formerly. The full-time day schools will probably attract and hold a larger percentage of the children under sixteen years than formerly. These children will make definite demands upon the schools which will have to be met.

At a recent conference on vocational education held in East Aurora, New York, it was declared that neither the present vocational schools nor the regular public schools devoted to general education are prepared to deal suitably with all the types of children seeking education. These types may be grouped roughly into two classes: those seeking general education and those seeking vocational education, and each class falls into two subdivisions. For those children needing general education, the regular public schools, diversified in character as needs develop, should take care of that group to meet whose requirements they are especially designed; and practical arts schools should be provided for that group that may be termed concrete-minded rather than academic-minded, but who, nevertheless, will profit most from general education. For those children needing vocational education the present type of full-time vocational school is well adapted to meet the requirements of those who have already determined upon their life-work

and are ready to enter upon a course of training; but there remains a group of children who are not ready to make an intelligent choice of life-work, and for such children there should be provided what might be called prevocational schools to afford them the experience through which they would be enabled to choose wisely.

In view of these facts it is clear that the passage of the Federal Child Labor law puts the task of providing different types of schools for the different types of children squarely up to the people. It will force the issue which has been pending for some time, and for this reason, if for no other, it will serve a useful purpose.